OBSERVATIONS

ON THE

DUTY AND POWER

OF

JURIES,

AS ESTABLISHED BY THE

LAWS OF ENGLAND.

WITH

EXTRACTS FROM VARIOUS AUTHORS.

BY

A FRIEND TO THE CONSTITUTION.

THIRD EDITION.

LONDON:

PRINTED FOR G. KEARSLEY, No. 46, FLEET-STREET

1796.

PRICE SIX-PENCE.

ADVERTISEMENT.

THE following Extracts were not intended for publication, but ſelected ſolely for the Uſe of the Editor's Sons, in order to make an early Impreſſion on their Minds, of that ineſtimable Privilege of Engliſhmen, TRIAL BY JURY. At the earneſt ſolicitation of ſeveral reſpectable Friends, he has been prevailed on to publiſh them. If it ſhould aſſiſt thoſe who may not have the Opportunity of conſulting larger Works, or tend to the Satisfaction of any of his Countrymen, who may hereafter be called upon to diſcharge the important Office of a Juryman, he ſhall think that his time has not been ill employed.

INTRODUCTION.

" SOME Authors have endeavoured to trace " the original of Juries up as high as the Britons " themſelves, the firſt inhabitants of our " Iſlands; but certain it is, that they were in " uſe among the earlieſt Saxon Colonies, this " inſtitution being aſcribed, by Biſhop Nichol- " ſon, to Woden himſelf, their great legiſlator " and captain. When the Normans came in, " William, though commonly called the Con- " queror, was ſo far from abrogating this Pri- " vilege of Juries, that in the fourth year of " his reign, he confirmed all King Edward the " Confeſſor's Laws, and the ancient Cuſtoms of " the kingdom, whereof this was an eſſential and " moſt material part. Afterwards when the great " charter, commonly called MAGNA CHARTA, " which is nothing elſe than a recital, confirma- " tion, and corroboration of our ancient Eng- " liſh Liberties, was made and put under the " Great Seal of England, in the ninth year of " King Henry the IIId, anno domini 1225, " then was this privilege of Trials by Juries, " in an eſpecial manner, confirmed and eſta- " bliſhed, as in the fourteenth chapter; *That no* " *amercement ſhall be aſſeſſed but by the oath of* " *good and honeſt men of the vicinage*; and more " fully in the nine and twentieth chapter, " No " Freeman ſhall be taken or impriſoned, nor

" be

" be diſſeized of his Freehold or Liberties, or " Free Cuſtoms, or be outlawed or exiled, or " any other way deſtroyed, nor ſhall we paſs " upon him, or condemn him, but by the law- " ful Judgment of his Peers. Which grand " Charter having been confirmed by above thirty " Acts of Parliament, the ſaid Rights of Juries " thereby, and by conſtant uſage, and common " cuſtom of England, which is the Common " Law, is brought down to us as our *undoubted* " *Birth Right*, and is in fact the beſt inheritance " of every Engliſhman.

" It is therefore, upon the whole, a duty " which every man owes to his country, his " friends, his poſterity, and himſelf, to main- " tain, to the utmoſt of his power, this valuable " Conſtitution in all its Rights, to reſtore it to " its ancient dignity, if at all impaired by the " different value of Property; or otherwiſe de- " viated from its firſt inſtitution; to amend it " whenever it is defective; and above all to " guard, with the moſt jealous circumſpection, " againſt the introduction of new and arbitrary " methods of Trial," which, under a variety of " plauſible pretences, may in time imperceptibly undermine this *preſervative* of *Engliſh* " *Liberty*."——Thus far, a learned Commentator on the Laws of England.

Read, mark, learn and inwardly digeſt what follows.

" A JURY

"A JURY OF TWELVE MEN ARE BY OUR LAWS "THE ONLY PROPER JUDGES OF THE MAT- "TER ON ISSUE BEFORE THEM."

Coke's Inſtitutes, Part IV. p. 84

THAT teſtimony, which is delivered to induce a Jury to believe or not believe the matter of fact in iſſue, is called in law *evidence*, becauſe the Jury may, out of many matters of fact, "*ſee* "*clearly the truth*," of which they alone are the PROPER JUDGES.

2dly, When any matter is ſworn, writing read, or offered, whether it ſhall be believed or not, or whether it be true or falſe in point of fact, the Jurors are the PROPER JUDGES.

3dly, Whether ſuch an act was done in ſuch or ſuch a manner, or to ſuch an *intent*, the Jury are the PROPER JUDGES. The Court is not judge of theſe matters, which are evidence to prove or diſprove the thing on iſſue and therefore, the witneſſes are always ordered *to look at*,

and to direct their ſpeech to the Jury, they being, as to the teſtimony given, the PROPER JUDGES.

In all pleas of the Crown, or matters criminal, the priſoner is ſaid to put himſelf for trial upon his country, which is explained and referred by the clerk of the court, to be meant of the Jury, when he ſays, WHICH COUNTRY YOU ARE.

THE PART OF THE KING's JUSTICES OR THE COURT, IS TO DO EQUAL JUSTICE AND EQUAL RIGHT.

I. To ſee the Jury be regularly returned, and duly ſworn.

II. To ſee that the priſoner, in caſes where it is permittable, be allowed his lawful challenges.

III. To adviſe by law, whether ſuch matter ſhould be given in evidence or not ſuch a writing read or not, or ſuch a perſon be admitted to be a witneſs, &c. &c.

IV. Becauſe by their learning and experience they are preſumed to be beſt qualified to aſk pertinent queſtions, and in the cleareſt manner, ſooneſt to ſift out the truth they commonly examine the witneſſes in court, but not thereby excluding the Jury, who of right *may*, and where they ſee cauſe, *ought* to aſk them any neceſſary queſtions.

V. As

V. As learned and lawful aſſiſtants to the Jury, they recapitulate and ſum up the heads of the evidence; but the Jurors are, notwithſtanding, to conſider whether it be done *truly*, *fully*, and *impartially*; for one man's memory may ſooner fail than that of twelve men. But ſince all matter of law ariſes out of matter of fact, ſo that till the fact be eſtabliſhed, there is no room for law; all ſuch diſcourſes of a Judge to a Jury are, or ought to be, hypothetical, not coerſive, conditional, nor poſitive, viz. If you find the fact thus, or thus, then you are to find for the defendant, or the like; obſerving, that in all criminal caſes, the verdict ought invariably to be ſimply *guilty*, or *not guilty*.

Laſtly, The king's juſtices are to take the verdict of the Jury, and thereupon to give judgment according to law. For the office of a judge, as Coke well obſerves, is not to *make* any law by *forced interpretations*, but plainly and impartially to declare the law already eſtabliſhed, or in the words of Blackſtone, "he is only to declare and pronounce, not to "make or new model the law."

A JUDGE's

A JUDGES's OR A COUNSEL's DECLAMATION, IS NOT TO BE CONSIDERED AS CONCLUSIVE EVIDENCE OF GUILT.

It is not uncommon for the counſel to miſrepreſent matters of law, as well as matters of fact in the courſe of their pleadings; ſo that little dependance ſhould be placed on what falls from them by the Jury. They are not upon oath, and would ſay perhaps ten times more in favour of their opponents, had they been paid a larger fee. In ſhort, moſt of them will advance palpable untruths, and uſe very unwarrantable language to browbeat, perplex, and confound the witneſſes, to eſtabliſh their own cauſe; and, indeed, many innocent men have unintentionally advanced contrarieties ſo as nearly to perjure themſelves, through the wicked and abominable conduct of a counſel. This practice, though common, ought to be ſeverely reprehended both by the court and by the Jury; and here alſo it may be remarked, that had our wiſe and cautious anceſtors thought fit to depend upon the *caſual honeſty of judges*, they needed not to have been ſo extremely zealous to continue the *uſage of Juries*. Formerly none could be a judge of aſſize in the county where he was born, or did inhabit; 33 Henry VIII, c. 24. but by the 12th of George II, c. 27, it is altered.

OF VERDICTS.

In all actions and cases, the court is obliged to receive the verdict of a Jury, provided it be pertinent to the point in issue. If the Jury doubt, they may refer themselves to the court, but they are not bound to do so.—3 Salk. 373.

Verdicts are of four kinds, viz. general, special, public, and private.

I. General verdicts are such, which declare the prisoner guilty or not guilty.

II. Special verdict is when the Jury find the matter at large according to the evidence, and pray the judgment of the court as to what the law is on that point.

III. Public verdict, is when it is delivered in open court.

IV. Private verdict, or privy verdict, when given out of court before any of the judges of the same. It is a favour allowed by the court to the Jury for their ease, or the judge after great fatigue, desires the Jury will come to him at his house or chambers with the verdict, i. e. to declare the same. In criminal cases, a private verdict cannot be given, because the Jury are commanded to look at the prisoner at the bar when they give their verdict, and on that account the prisoner must be there present.—Raymond, 93.

In all criminal caſes, the oath adminiſtered to Juries runs nearly thus: "You ſhall well and "truly *try*, and true deliverance make, accord-"ing to the evidence, between our Sovereign "Lord the King, and the Priſoner at the bar," ſo help you God!

Since Jurors are ſworn to make true deliverance, they ſhould certainly conſider whether the offence proved be of equal magnitude with that charged in the indictment; and where it is not, they ought to deliver or acquit the priſoner of the charge; for, if the verdict be ſpecial, it of courſe is referred to the twelve judges, and the priſoner muſt be remanded, and kept in durance until the judges are at leiſure, and willing to meet and argue the buſineſs. Is not this rather a breach of the oath which the Juryman takes? How does the Jury well and truly try, and true deliverance make of the priſoner, if the Jury refers it to another? If any doubts ariſe, they are obliged to acquit; or how will they *well*, that is fully, and truly, that is, impartially, try the priſoner, if they refer it to the judges. If the Jury upon their conſciences, and the beſt of their underſtanding, according to that which is proved againſt the priſoner, find he is guilty of that crime wherewith he ſtands charged, then the Jury are to ſay he is GUILTY. But if they are are not ſatisfied that either the act he has committed was treaſon, or other crime charged, though

though it be never ſo often called ſo, or the act itſelf, if it were ſo criminal, was not done, they are to acquit him. For the end of Juries is to preſerve men from oppreſſion, which may happen as well by puniſhing or ruining them, for that as a crime, which is not ſo, or at leaſt not ſuch, or ſo great as is pretended, as by charging them with the commiſſion of that, which in truth was not committed. And therefore, I aſk again, how do the jury well and truly try, and true deliverance make, when they do but deliver the priſoner up to others to be condemned for that, which they the Jury could not take upon themſelves to declare on their oath to be any crime? How cautious therefore ought Juries to be left they ſhould bring in verdicts which determine nothing, and leave the court to act as it pleaſes!

OF THE TERMS FALSELY, SCANDALOUSLY, AND MALICIOUSLY, &c. IN DECLARATIONS, INDICTMENTS, AND INFORMATIONS.

In ſome inſtances theſe terms may be harmleſs, but in moſt caſes they are inflammatory, inſomuch as they may inflame or prejudice the mind of the Jurors, who ought particularly to diſtinguiſh legal implications from ſuch as conſtitute, or materially aggravate the crime. Theſe terms may lead the Jury to conſider the act as falſely, ſcandalouſly, or maliciouſly, with an

intent to raiſe ſedition, defame the government, or kill the king, merely becauſe the charge in the indictment runs thus, or the court or counſel againſt the priſoner might have endeavoured to impreſs on their minds, that the priſoner acted with that intent.

But the Jury are not to have their mouths ſtopped, nor their conſciences ſatisfied with the judge or counſel telling them, "that they the Jury "have nothing to do with that; it is only mat-"ter of form, or matter of law; they are only "to examine the fact, whether he ſpake ſuch "words, wrote or ſold ſuch a book, or the "like." For if they the Jury are thus impoſed on, though they mean to give their verdict according to the bare act, or the naked fact *only*, yet the clerk recording it, demands a farther confirmation, ſaying to them thus, "Well then, "you ſay AB. is guilty of the treſpaſs or miſ-"demeanor, in manner and form as ſet forth "in the indictment, and ſo you ſay all;" whereupon the verdict is drawn up, and entered as follows:

"The Jurors do ſay upon their oaths, that "AB. maliciouſly, in contempt of the king and "the government, with an intent to ſcandalize "the adminiſtration of juſtice, and to bring the "ſame into contempt, or to raiſe ſedition, ſpake "ſuch words, publiſhed ſuch a book, or did "ſuch an act againſt the peace of our Lord the

" King, his Crown and Dignity." Thus a verdict may become compoſed, in its material part, of falſehood, and twelve men ignorantly drop into a perjury, and juſtify a lye upon record to all poſterity. Thus the priſoner may be, without juſt cauſe, hanged, or at leaſt fined and impriſoned, to the utter ruin of himſelf and family.

As to the Judges, they have a fairer plea. For we, they may ſay, did nothing but our duty according to the uſual practice; the Jury found the priſoner guilty upon their oath, and they were the PROPER JUDGES. We took him as they preſented him to us, and according to our duty we only pronounced the ſentence that the law inflicts in ſuch caſes; if he were innocent, or not ſo bad as repreſented, his deſtruction lies upon the Jury, not upon us.

ON THE FREQUENT IMPROPER CONDUCT OF JURIES.

It is frequent that when Juries are withdrawn to conſult on their verdicts, they ſoon forget the ſolemn oath which they took, and the important charge of the life and liberty of men and their eſtates, of which they are become *Judges*, and that on their breath depend, not only the lives and fortunes of the particular party, but perhaps preſervation or ruin of ſeveral numerous families. Now without due conſideration of all this, ſometimes without one ſerious thought

or

or conſulted reaſon offered, pro or con, the foreman raſhly delivers their opinions, and all the reſt, in reſpect to his ſuppoſed gravity and experience, or becauſe he has the largeſt eſtate, or to avoid the trouble of diſputing the point, or to prevent the ſpoiling of a dinner by delay, or, for ſome ſuch weighty reaſon, ſubmit to his deciſion. This practice, or ſomething of the like kind, is ſaid to be too cuſtomary amongſt ſome jurors, which occaſions ſuch extraordinary diſpatch of the weightieſt and moſt intricate matters. Such ſlaviſh fear attends many jurors, that let but the Court direct to find guilty or not guilty, though they themſelves ſee no juſt reaſon for it, oftentimes, though their opinions are contrary, and their conſciences tell them it ought to go otherwiſe, yet bring in their verdicts without having a ſerious regard to the courſe and force of the evidence; but as the Court ſums it up, *they find*; as if Juries were appointed for no other purpoſe but to echo back what the Judge would have done. In a word, as lord Coke obſerves, the Jury muſt have the guilt proved to them, not by ſuſpicion, not by conjecture or inference, but proved in all the *full unerring force that moral demonſtration will allow.*

Juries have been known to determine on their verdict by holding up of hands, drawing lots, or toſſing up a halfpenny, when there appeared equal numbers for plaintiff and defendant. But ſhould their

their verdict prove accidentally right and juſt do they not, by theſe means, abuſe their oath, hazard their own ſouls, as well as their neighbour's life, liberty, and property, in blindly depending on the opinion, or perhaps paſſions of others, when they were ſworn *well and truly to try* them themſelves?

There are ſome who make a trade of being a Juryman, ſeeking for the office, uſing means to be conſtantly continued in it, and who will not give a diſobliging verdict leſt they ſhould ſerve no more. There are others who hope to ſignalize themſelves, to increaſe their trade, or get ſome preferment, by *ſerving a turn*. There are others who have particular piques and a humour of revenge againſt ſuch or ſuch parties; if a man be but miſcalled by ſome odious name, or ſaid to be of an exploded faction; hang him, they cry, find him guilty, no puniſhment can be too bad for ſuch a fellow; and in ſuch a caſe they think it merit to ſtretch the evidence, and ſtrain a point of law, becauſe they fancy it makes for the intereſt of government.

They alſo are equally culpable who, from their abhorrence of Adminiſtration, would acquit one of their own party merely becauſe he is ſuch, and thus defeat the purpoſes both of Law and Juſtice. The Juryman is entruſted with the moſt ſolemn Charge, and though he ſhould think that his voice might counteract either the Meaſures

of

of Adminiſtration, or of the Oppoſition, he is not, on that account, to be more or leſs anxious to acquit or condemn the Priſoner.

Some Juries, there are who, either to ſhew their penetration or, to avoid taking up the Judges time, lay their heads together in open Court, and in a few minutes determine upon that Evidence, which for many hours, had engaged the abilities of the firſt profeſſional men in the Kingdom.---Juries would therefore do well to conſider themſelves, *at the moment*, ſuperior to the Judges, or to any earthly power under Heaven, and on no conſideration to deliver their verdict without previouſly WITHDRAWING and debating freely, among themſelves, on the nature of the Evidence they had heard and on which the Life Liberty and Property of their fellow creature depended.

ON THE NECESSITY OF VERDICTS BEING GENERAL.

In order to prove that in all criminal caſes verdicts ought to *be general*, that is, *guilty, or not guilty*, and to ſhew the neceſſity of the Jury's conſidering whether the offence proved be of equal magnitude with that charged in the indictment, let us ſuppoſe a man was indicted, for that he, not having the fear of God before his eyes, but being inſtigated by the malice of the devil, did, ſcandalouſly and maliciouſly, to anſwer his own wicked purpoſes, read a certain

chapter

chapter in the Bible, in order to apply the ſame to his baſe and wicked deſigns; that is to ſay, againſt the peace of our Sovereign Lord the King, his Crown, and Dignity; for ſo, in nearly theſe words, do indictments generally run: Admit that on the proſecution it was proved, to the ſatisfaction of the Court and of the Jury, that the priſoner did read the chapter ſet forth in the indictment, *all* but the *laſt* verſe. What ought to be the verdict, in that caſe, even had there been fifty counts in the indictment? It was plain he had not been guilty of the *charge* ſet forth againſt him, notwithſtanding he had been ſeemingly guilty by reading *part* of the ſaid chapter. But as it is not poſſible to affix or diſcriminate an intermediate ſentence between guilty and not guilty, and as the indictment charged him with an abſolute and ſpecific crime, which was by no means proved, the verdict muſt be *general* to the *general charge*, and conſequently the Jury, according to their oath, and according to the laws of God and the laws of man, are bound to acquit him by a general verdict of *not guilty*, for it is evident the offence proved was not of equal magni udewiththe charge.

Upon the high authority of an excellent Judge, now on the bench, " the Jury are to exerciſe " their own judgment, and in doing ſo they are " to pay no regard or attention to what the Court " may have ſaid, except ſo far as it may be ſup-

" ported by the *facts* of the caſe, and lead them " to the principal points of the evidence brought " forward, both for the proſecution and for the " priſoner; for a Jury is in no caſe bound to " attend to any opinion *but their own*, in form- " ing their deciſion on the *general queſtion of* " *guilt and innocence.* Every verdict ought to " be the Jury's *own verdict*, in order that the " country may be ſatisfied, that, as they are " bound by their oath, they have made a *true* " *deliverance.*"

THE POSITIVE QUALIFICATIONS REQUISITE FOR JURYMEN.

They ſhould firſt of all ſeriouſly regard the weight and importance of the office; their own ſouls, other men's lives, liberties, and eſtates, are at ſtake and in their hands, therefore they ſhould conſider things well beforehand, and be armed with firm, ſound, and well grounded conſciences, with minds free from malice, fear, hope, or favor; leſt, inſtead of judging others, they ſeek their own condemnation, and ſtand in the ſight of God, the Creator and Judge of all men, as murderers, or perjured malefactors.

They are to obſerve well the record, indictment, or information, that is read; its ſeveral parts, as to the matter, manner, and form.

They are to pay due notice and regard to the evidence offered, for proof of the indict-

ment,

ment, and every part of it, as well as to manner and form as matter, and if they ſuſpect any ſubornation or tampering with the witneſſes, or any malice or ſiniſter deſigns, they are to have a ſpecial regard to the circumſtances, or incoherencies in the teſtimonies, and endeavour by apt queſtions to ſift out the truth or diſcover the villainy.

THE JURY would at all times do well, to write down the evidence, or the heads of it, that they may the better recal it to memory. They are to conſider well the nature of the crime charged, and what law the proſecution is grounded upon, and to diſtinguiſh the ſuppoſed criminal fact, from the aggravating words, which are oftentimes uſed in the indictment, and which are not proved.

THE JURY are to remember that there is no plurality of voices to be allowed: ſeven cannot over-rule *five as a majority*, nor can eleven one; but as the verdict is given in the name of all the twelve, or elſe it is void, ſo every one of them muſt be actually agreeing, and ſatisfied in his particular underſtanding and conſcience, of the *truth and righteouſneſs* of ſuch verdict, or elſe he is *foreſworn*; and therefore if one differ in opinion from his brethren, they muſt be kept together till either they, by ſtrength of reaſon or argument, can ſatisfy him, or he convince them. He is not to be bullied, much leſs puniſhed by

the court, into a compliance: for as Lord Chief Juſtice Vaughan well ſays, in his Reports, page 115, " If a man differ in opinion or judgment " from his fellows, whereby they are kept a " day and a night, though his diſſent may not " in truth be as reaſonable as the opinion of " the reſt that agree, yet if his judgment be not " ſatisfied, one diſagreeing can be no more " criminal, than four or five diſagreeing with " the reſt." Nothing is more common, than for two lawyers or judges to draw oppoſite concluſions from the ſame teſtimonies, and conſequently the Judge and Jury, and the Jury among themſelves, may honeſtly differ in their opinion, as well as two Counſel or two Judges may, which often happens; for want of duly underſtanding and conſidering theſe things, Juries many times plunge themſelves into dreadful perplexities.

OF GRAND JURIES.

" Grand Juries are uſually gentlemen of the " beſt figure in the county, and are compoſed " of not leſs than twelve, nor more than twenty-" three; that twelve may be a majority." (In London they are choſen from among the reputable freemen); " they are ſworn to ſhew " neither favor nor affection to any, in their in-" quiries: the king's ſecrets, their fellows, and " their own, to keep, &c." " They are then pre-

" viouſly inſtructed in the articles of their in-
" quiry, by a charge from the judge, who pre-
" ſides upon the bench; they then withdraw to
" fit and receive indictments, which are pre-
" ferred to them in the name of the king, but
" at the ſuit of any private proſecutor, and they
" are only to hear evidence on the part of the
" proſecution: for the finding of an indict-
" ment is only in the nature of an inquiry or ac-
" cuſation, which is afterwards to be tried and
" determined; and the Grand Jury are only to
" inquire upon their oaths, whether there be
" ſufficient cauſe to call upon the party to an-
" ſwer it. A Grand Jury, however, ought to be
" thoroughly perſuaded of the truth of an in-
" dictment, ſo far as their evidence goes, and
" not to reſt ſatisfied merely with remote pro-
" babilities: *a doctrine that might be applied to*
" *very oppreſſive purpoſes.* When the Grand
" jury have heard the evidence, if they think it
" a groundleſs accuſation, they endorſe on the
" back of the bill, " Not found," and then the
" party is diſcharged without further anſwer.
" If the Jury are ſatisfied of the truth of the ac-
" cuſation, they then endorſe upon it, " A true
" bill." But to find a bill, twelve at leaſt of
" the jury muſt agree; for ſo tender is the law
" of England of the lives of the ſubjects, that
" no man can be convicted at the ſuit of the
" king, of any capital offence, unleſs by the
" una-

" unanimous voice of twenty-four of his equals " and neighbours; that is, by twelve at leaſt of " the Grand Jury, in the firſt place aſſenting " to the accuſation, and afterwards by the whole " Petit Jury, of twelve more, finding him guilty " upon his trial; but if twelve of the Grand " Jury aſſent, it is a good preſentment, though " ſome of the reſt diſagree; and the indict- " ment when ſo found, is publicly delivered " into court. If a Grand Juryman diſcloſes to " any perſon indicted, the evidence that ap- " peared againſt him, he is guilty of a high miſ- " priſion, and liable to be fined and impri- " ſoned."—Blackſtone's Com.

Since the deciſion of the Grand Jury puts a man upon his trial, which is in itſelf a hardſhip to an innocent perſon,* how cautious ought they to be that the evidence brought before them, is fully to the point, that there is no colluſion between the parties, whoſe teſtimonies they have heard. In oppoſition to this right mode of conduct, Grand Jurymen frequentlyſay to themſelves, " our deciſion is not final, the priſoner will have " a fair trial," and thus they hurry through the Evidence, without paying ſufficient attention to all its parts, or to the characters of the Witneſſes. No man ſhould give his voice for putting an-

* For the Balance preponderates againſt him the moment the Bill is found, probably to the utter ruin of his character.

other

other to the riſque of a Verdict from the Petit Jury who it not fully and firmly convinced that from the Evidence produced before the Grand Jury, the accuſed perſon is guilty of the crime laid to his charge.

CONCLUSION.

It is not intended, by the foregoing obſervations, to encourage partiality, or to tempt any juryman to a connivance at malefactors, whereby thoſe peſts of ſociety would eſcape condign puniſhment, and ſo the law ceaſe to be a terror to evil doers; that would be in him a horrible perjury, and a great injury to the community; for he is highly injurious to the *good*, that abſolves the *bad*, when crimes are proved againſt them. And it is to be obſerved, as an excellent golden rule, that in caſes where the matter is doubtful, both lawyers and divines preſcribe rather *favour* than *rigour*. The very eminent and learned judge Forteſcue, ſays, cap. 27, "That he had "rather twenty evil doers ſhould eſcape death, "through tenderneſs or pity, than that *one* in-"nocent man ſhould ſuffer unjuſtly."

And Lord Coke's moſt excellent advice, which he addreſſes to *all judges*, may, with not leſs propriety, be applied to Jurors. "Fear not to "do right to all, and to deliver your verdicts "juſtly, according to the laws, for fear is no-"thing but a betraying of the ſuccours that rea-

"ſon

" ſon ſhould afford, and if you ſincerely exe-
" cute juſtice, be aſſured of three things:
" I. Though ſome may traduce you, yet God
" will give you his bleſſing.
" II. That though thereby you may offend great
" men and favourites, yet you ſhall have the
" favourable kindneſs of the Almighty, and
" be his favourites.
" III. That in ſo doing, God will defend you
" as with a ſhield; as the Pſalmiſt ſays,
" For thou, Lord, wilt give a bleſſing unto the
" righteous, and with thy favourable kind-
" neſs wilt thou defend him as with a ſhield."

APPENDIX.

AT the ſecond Seſſions, held at the Old Bailey, 12th January, 1796, in the Mayoralty of Mr. Alderman Curtis.

The King, v. Croſsfield, Smith, Higgins, and Le Maitre, for High Treaſon.

The Solicitor of the Treaſury, acting for the Attorney General, requeſted to be admitted during the examination of the Witneſſes on the above indictment; but the Grand Jury, after debating upon the matter ſome time, determined that, conſiſtently with their Oath, no perſon, however exalted his ſtation, could, if not a Witneſs upon the occaſion, be preſent whilſt the Jury were making their inqueſt into the charges in any indictment. The Solicitor therefore was not admitted.